

**GIBBONS P.C.**

One Gateway Center  
Newark, New Jersey 07102-5310

Philip J. Duffy, Esq.

Telephone: (973) 596-4821

Facsimile: (973) 639-6219

E-mail: [Pduffy@gibbonslaw.com](mailto:Pduffy@gibbonslaw.com)

David N. Crapo, Esq.

Telephone: (973) 596-4523

Facsimile: (973) 639-6244

E-mail: [Dcrapo@gibbonslaw.com](mailto:Dcrapo@gibbonslaw.com)

Special Counsel for the Plaintiff,  
The Great Atlantic & Pacific Tea Company, Inc., *et al.*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

IN RE:

THE GREAT ATLANTIC & PACIFIC TEA  
COMPANY, Inc., *et al.*,<sup>1</sup>

Debtors.

THE GREAT ATLANTIC & PACIFIC TEA  
COMPANY, INC., *et al.*

Plaintiff,

v.

PEPSICO, INC; BOTTLING GROUP, LLC (d/b/a  
PEPSI BEVERAGES COMPANY and f/d/b/a

Chapter 11

Case No. 15-23007 (RDD)

(Jointly Administered)

Adv. Proc. No. 18-08245 (RDD)

**STIPULATION DISMISSING  
THIRD AND FOURTH  
CAUSES OF ACTION**

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: 2008 Broadway, Inc. (0986); The Great Atlantic & Pacific Tea Company, Inc. (0974); A&P Live Better, LLC (0799); A&P Real Property, LLC (0973); APW Supermarket Corporation (7132); APW Supermarkets, Inc. (9509); Borman's, Inc. (9761); Delaware County Dairies, Inc. (7090); Food Basics, Inc. (1210); Kwik Save Inc. (8636); McLean Avenue Plaza Corp. (5227); Montvale Holdings, Inc. (6664); Montvale-Para Holdings, Inc. (2947); Onpoint, Inc. (6589); Pathmark Stores, Inc. (9612); Plainbridge LLC (5965); Shopwell, Inc.(3304); Super Fresh Food Markets, Inc. (2491); The Old Wine Emporium of Westport, Inc. (0724); Tradewell Foods of Conn., Inc. (5748); and Waldbaum, Inc. (8599). The international subsidiaries of The Great Atlantic & Pacific Tea Company, Inc. are not debtors in these chapter 11 cases. The location of the Debtors' corporate headquarters is 19 Spear Road, Suite 310, Ramsey, New Jersey 07446.

THE PEPSI BOTTLING GROUP); FRITO-LAY  
NORTH AMERICA, INC.; PEPSI-COLA  
METROPOLITAN BOTTLING COMPANY,  
INC.; PEPSI-COLA HASBROUCK HEIGHTS;  
PEPSI-COLA BOTTLING COMPANY;  
QUAKER SALES AND DISTRIBUTION, INC.;  
MULLER QUAKER DAIRY, LLC; STACY'S  
PITA CHIP COMPANY, INC.; and PEPSI  
BOTTLING GROUP, NJ; PEPSI USA,

Defendants.

Plaintiff, The Great Atlantic & Pacific Tea Company, Inc. and its affiliated debtors (collectively, the “Debtors”), Defendant PepsiCo, Inc. (“PepsiCo”) and Pepsi-Cola Bottling Company of New York, Inc., by and through their respective undersigned counsel, hereby stipulate and agree as follows:

### **RECITALS**

1. This adversary proceeding was commenced by the filing of an Adversary Complaint on April 16, 2018.
2. On April 23, 2018, the Debtors filed their First Amended Adversary Complaint in this adversary proceeding.
3. By the Third and Fourth Causes of Action the Debtors seek to avoid certain pre-petition payments (collectively, the “Payments”) allegedly made by the Debtors to Defendant Pepsi-Cola Metropolitan Bottling Company, Inc. (“Pepsi Metro”) pursuant to 11 U.S.C. § 547, and to recover those Payments from either Pepsi Metro, PepsiCo, or Bottling Group, LLC (d/b/a Pepsi Beverages Company and f/d/b/a The Pepsi Bottling Group) (“Bottling Group”) pursuant to 11 U.S.C. § 550.

4. Based on discussions and exchanges of information between the parties to this Stipulation, it now appears that the Payments were, in fact made by the Debtors to Pepsi-Cola Bottling Company of New York, Inc.

5. Pepsi-Cola Bottling Company of New York, Inc. is not a party to this adversary proceeding, and, pursuant to the Global Settlement Agreement, any claims by the Debtors' bankruptcy estate against Pepsi-Cola Bottling Company of New York arising under 11 U.S.C. § 547 are being administered by the Official Committee of Unsecured Creditors.

6. It is, therefore, necessary for the Debtors to further amend the Complaint to dismiss the Third and Fourth Causes of Action.

7. Pepsi Metro has not answered the Complaint.

#### **AGREEMENT**

The Debtors, PepsiCo and the Pepsi-Cola Bottling Company of New York, Inc., hereby stipulate and agree as follows:

1. The Payments are correctly identified on Exhibit A hereto.
2. The Payments were made to and received by Pepsi-Cola Bottling Company of New York, Inc.
3. The Debtors agree to further amend the Complaint to eliminate the Third and Fourth Causes of Action.
4. By acknowledging receipt of the Payments, Pepsi-Cola Bottling Company of New York, Inc. does not waive and expressly reserves and preserves any and all rights, claims, defenses, setoffs or counterclaims of any type it may have against the Debtors and/or their estates in

bankruptcy and, by way of example, does not concede that any of the Payments are avoidable under 11 U.S.C. § 547.

5. By dismissing the Third and Fourth Causes of Action in the Complaint, the Debtors do not waive or release any other claims they may have against either Pepsi Metro, Bottling Group or PepsiCo.

6. By executing this Stipulation, neither PepsiCo nor Pepsi-Cola Bottling Company of New York, Inc. is making an appearance in this adversary proceeding and does not waive any claims, defenses, setoffs or counterclaims of any type it may have against the Debtors.

**GIBBONS P.C.**

By: /s/ David N. Crapo

Philip J. Duffy, Esq.  
David N. Crapo, Esq.  
One Gateway Center  
Newark, New Jersey 07102-5310  
Telephone: (973) 596-4524  
E-mail: [dcrapo@gibbonslaw.com](mailto:dcrapo@gibbonslaw.com)

*Attorneys for Plaintiffs The Great Atlantic &  
Pacific Tea Company, Inc., et al.*

**FRANKGECKER LLP**

By: /s/ Jeremy C. Kleinman

Jeremy C. Kleinman, Esq.  
325 North LaSalle Street, Suite 625  
Chicago, Illinois 60654  
Telephone: (312) 276-0035  
E-mail: [jkleinman@fgllp.com](mailto:jkleinman@fgllp.com)

*Attorneys for PepsiCo, Inc.*

**COZEN O'CONNOR**

By: /s/ Mark E. Felger

Mark E. Felger, Esq.  
1201 North Market St., Suite 1001  
Wilmington, Delaware 19801  
Telephone: (302) 295-2087  
E-mail: [mfelger@cozen.com](mailto:mfelger@cozen.com)

*Attorneys for Pepsi-Cola Bottling Company of New York, Inc.*